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Message Text

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SUBJECT: UNIFORMITY OF COMPUTER SAFEGUARDS

REF: OECD PARIS 14302

USDEL SHOULD USE FOLLOWING POINTS IN REPLYING TO SAFEGUARDS QUESTION:

1. SOME OF OUR COLLEAGUES HAVE TAKEN ISSUE WITH THE USG OVER WHAT THEY CONSIDER TO BE THE LACK OF A CLEAR UNDER-STANDING REGARDING THE EXPORT OF COMPUTER SYSTEMS WITH CHARACTERISTICS EXCEEDING THOSE OF NOTE 12. SINCE THE US ASSIGNS SAFEGUARDS ON AN AD-HOC BASIS, ALLEGIATIONS ARE MADE THAT THE U.S. IS BEING LESS STRINGENT WITH ITS OWN CASES THAN WITH THOSE SUBMITTED BY OTHER MEMBER COUNTRIES.
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2. AS A GENERAL RULE, THE UNITED STATES BELIEVES THE LOWEST VISITATION/REPORTING REQUIREMENTS SHOULD BE THOSE SET FORTH IN NOTE 12(H)(2), BUT RECOGNIZES THAT IN CERTAIN INSTANCES NATIONAL LICENSING AUTHORITIES MAY BE JUSTIFIED IN CONSIDER-ING THAT SAFEGUARD TOO STRINGENT. CONVERSELY, THEY MAY ASSIGN SAFEGUARD CONDITIONS ABOVE THE NOTE 12 LEVEL IF THEY

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BELIEVE STRATEGIC CONCERNS MERIT STRICTER CONDITIONS.

3. IN ESSENCE, THE UNITED STATES PROPOSES THAT NOTE 12 BE UTILIZED AS A YARDSTICK IN ATTACHING SAFEGUARD CONDITIONS TO COMPUTER EXPORTS WHICH DO NOT QUALIFY FOR CONSIDERATION UNDER NOTE 12 AND, THEREFORE, ARE SUBMITTED UNDER THE GENERAL EXCEPTIONS PROCEDURE. IT SHOULD BE RECOGNIZED, HOWEVER, THAT IN SUCH SITUATIONS, NATIONAL LICENSING AUTHORITIES MAY BELIEVE THAT THE APPROPRIATE LEVEL OF SAFEGUARD CONDITIONS SHOULD BE ABOVE OR BELOW THE NOTE 12 STANDARD. THE U.S. AUTHORITIES FURTHER BELIEVE THAT WHEN A MEMBER COUNTRY SUBMITS SUCH A CASE TO THE COMMITTEE, IT IS INCUMBENT UPON THAT MEMBER TO EXPLAIN ALL RELEVANT FACTORS WHICH UNDERLIE ITS ASSIGNMENT OF SUCH CONDITIONS AND THAT SUCH SUBMISSIONS SHOULD BE HELD INSOFAR AS POSSIBLE, TO A MINIMUM.

4. THE AGENCIES OF THE USG RESPONSIBLE FOR SETTING VISITATION/REPORTING REQUIREMENTS ON U.S. COMPUTER CASES SUBMITTED TO COCOM AS AD HOC EXCEPTIONS BELIEVE THESE REQUIREMENTS SHOULD BE COMMENSURATE WITH THE TECHNICAL FACTORS AND OTHER PERTINENT CONSIDERATIONS ATTENDING EACH SEPARATE CASE, USING THE SAFEGUARD CONDITIONS SPECIFIED IN NOTE 12 AS A BASIS, BUT EXTENDING THEM IF SECURITY CONCERNS DICTATE.

5. FOR EXAMPLE, U.S. AUTHORITIES HAVE DIFFICULTY ASSIGNING SAFEGUARD CONDITIONS COVERING SMALL CPU'S WHICH WOULD QUALIFY FOR EXPORT UNDER THE ADMINISTRATIVE EXCEPTIONS
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PROCEDURE OF NOTE 9, WERE IT NOT FOR ONE PERIPHERAL DEVICE WHICH CAUSES A PARTICULAR PARAMETER TO EQUAL OR EXCEED A LIMIT OF NOTE 12 AND THEN ONLY MARGINALLY.

6. THE PROBLEM OF WHAT DEGREE OF SAFEGUARD CONDITIONS SHOULD BE ATTACHED BECOMES AGGRAVATED WHEN THE COST OF THE COMPUTER SYSTEM IS LOW, THE SYSTEM IS OTHERWISE WITHIN THE NOTE 9 LIMITS, AND IT IS CONSIGNED TO A CLEARLY CIVILIAN END-USE WHERE DIVERSION IS MOST UNLIKELY.

7. THE U.S. BELIEVES THAT THERE SHOULD BE AN ELEMENT OF FLEXIBILITY IN THE "RULE OF NOTE 12" TO ACCOMMODATE SITUATIONS SUCH AS DESCRIBED ABOVE,TO ENABLE NATIONAL LICENSING AUTHORITIES TO EXERCISE DISCRETIONARY JUDGMENT, TAKING INTO CONSIDERATION THE OVERALL CAPABILITY OF THE SYSTEM AND ITS END-USE, AND TO ASSIGN SAFEGUARDS WHICH EQUATE TO THOSE OF NOTE 12 GIVEN THE CIRCUMSTANCES SURROUNDING THE PARTICULAR TRANSACTION.

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8. FYI: WHILE WE RECOGNIZE THAT THE U.S. HAS SENT TO THE COMMITTEE MORE CASES THAT FALL INTO THE CATEGORY DESCRIBED ABOVE THAN HAVE OTHER MEMBERS, THIS IS NOT BY DESIGN,

RATHER IT REFLECTS THE SPECIAL CHARACTERISTICS OF MANY U.S. SUBMISSIONS. END FYI

9. KEEPING THE ABOVE INTERPRETATIONS IN MIND, LET US TURN TO THE QUESTION RAISED BY OUR GERMAN COLLEAGUE REGARDING THE LEVEL OF SAFEGUARDS WHICH SHOULD BE IMPOSED ON TRANSACTIONS NOT QUALIFYING FOR NOTE 12 CONSIDERATION BECAUSE OF DIFFICULTY OR IMPOSSIBILITY OF OBTAINING END-USE OR OTHER CERTIFICATION REQUIRED BY THAT NOTE. THIS PROBLEM IS ESPECIALLY SIGNIFICANT AS TRADE IN STRATEGIC GOODS WITH THE PEOPLES' REPUBLIC OF CHINA GROWS.

10. SINCE THE INCEPTION OF SECURITY TRADE CONTROLS, ASSESS-
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MENT OF ALL AVAILABLE INFORMATION ON THE NATURE AND ACTIVITIES OF PROSPECTIVE END USERS AND OF THE USES TO WHICH EXPORTS ARE PROPOSED TO BE PUT HAS BEEN ONE OF THE CHIEF MEANS EMPLOYED BY THE COMMITTEE IN REACHING JUDGMENTS ON THE ACCEPTABILITY OF PROPOSED EXPORTS OF EMBARGOED GOODS. SHIPMENT OF INDIVIDUAL ITEMS CAPABLE OF STRATEGIC USE HAS BEEN PERMITTED WHENEVER INFORMATION ON THE END-USER AND PLANNED END-USE HAS INDICATED A SUFFICIENT ASSURANCE OF PEACEFUL USE. WHILE ADMITTEDLY WE CAN NEVER BE COMPLETELY SURE OF THE VALIDITY OF SUCH INFORMATION,IT CAN BE JUDGED AGAINST ALL THE SURROUNDING CIRCUMSTANCES OF THE TRANSACTION INCLUDING SITE ACCESS AS WELL AS NORMAL USAGE IN LIKE SITUATIONS.

11. HOWEVER, ALMOST ALL OF OUR EXPERIENCE IN THIS REGARD HAS BEEN WITH EASTERN EUROPE AND THE SOVIET UNION. PROBLEMS HAVE ARISEN WITH THE RESUMPTION OF TRADE WITH THE PRC BECAUSE PRC AUTHORITIES APPEAR TO BE UNWILLING IN MANY CASES, THOUGH BY NO MEANS ALL, TO PROVIDE DOCUMENTATION NECESSARY TO REACH THE KIND OF DECISION DESCRIBED ABOVE. IN A 1976 SALE OF A COMPUTER TO THE PRC, THE USG LEVIED SAFEGUARD REPORTING REQUIREMENTS ON THE U.S. MANUFACTURER, AND IT IS ANTICIPATED THAT POST-SALE MAINTENANCE VISITS WILL SUBSTANTIALLY MEET SAFEGUARD OBJECTIVES.

12. THE U.S. GOVERNMENT IS NOT PREPARED AT THIS TIME TO RECOMMEND A SOLUTION TO THE DIFFICULTIES ENCOUNTERED BY THE LACK OF PROPER DOCUMENTATION. HOWEVER, WE WISH THE COMMITTEE TO KNOW THAT THE PROBLEMS WITH CHINA ARE CURRENTLY BEING REVIEWED.

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13. WE WOULD WELCOME THE COMMENTS AND SUGGESTIONS OF OUR COLLEAGUES ON THEIR VIEWS REGARDING SAFEGUARD CONDITIONS FOR TRADE IN STRATEGIC COMMODITIES WITH THE PEOPLES' REPUBLIC OF CHINA. VANCE

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